

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**TONY MURRAY,
Plaintiff,**

Vs.

Case #2:05-cv-1240-MEF

**VeLINDA WEATHERLY,
Defendant.**

SPECIAL REPORT

Comes now VeLinda Weatherly, a Member of the Alabama Board of Pardons & Paroles, named as a Defendant in the above-styled action, and shows unto the Court as follows:

Plaintiff's Claims

Murray alleges that Weatherly made statements during a parole hearing to the effect that Murray "ran" the prison where he is confined and that prison guards are afraid of him. Murray contends that this deprived him of liberty without affording him due process of law by depriving him of a "fair" chance at parole.

Defendant's Position

Murray is seeking monetary damages from Weatherly for actions taken on the bench during the hearing held to decide whether parole should be granted. She is absolutely immune from suit for these acts.

None of Weatherly's alleged actions violate clearly established law. A reasonable parole board member would not know that it is unconstitutional to have an opinion about a prisoner based on his prior history. She is entitled to qualified immunity.

Weatherly's actions did not deprive Murray of a right, privilege or immunity protected by the Constitution or laws of the United States.

Prisoners in Alabama do not enjoy a liberty interest in their desire to be paroled. In the absence of a liberty interest, the prisoner is not entitled to a fair process. Parole is a purely discretionary act. The power to grant parole is derived from the State's clemency power. The Constitution does not prohibit a State from withholding mercy without giving a reason, nor does it require the State to have any reason, much less a "good" reason, for withholding mercy.

Weatherly voted against granting parole. However, even if her vote is not counted, it has no effect. All three Members voted to deny parole. Murray did not persuade a single Member that he presented an acceptable likelihood of success.

Murray is serving a total term of thirty years in prison. He has been convicted of several violent felonies. One of those violent felonies was committed in prison. Murray was on parole when he shot and killed a security officer during a robbery, which led to his manslaughter conviction.

Murray has an extensive disciplinary record. The opinions that Weatherly is alleged to have expressed are not inconsistent with his record.

Conclusion

The Complaint fails to state a claim under 42 U.S.C. §1983. Weatherly moves the Court to dismiss the Complaint.

Respectfully submitted,

TROY KING
ATTORNEY GENERAL

GREGORY O. GRIFFIN, SR.
CHIEF COUNSEL

s/HUGH DAVIS
DEPUTY ATTORNEY GENERAL
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Hugh.Davis@paroles.alabama.gov

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2006, I electronically file the foregoing with the Clerk of the Court using the CM/ECF system with will send notification of such to the following: None, and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant:

Tony Murray
AIS# 129256
Easterling Correctional Facility
200 Wallace Drive
Clio, Alabama 36017-2615

Done this 1st day of March, 2006.

Respectfully submitted,

s/HUGH DAVIS
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